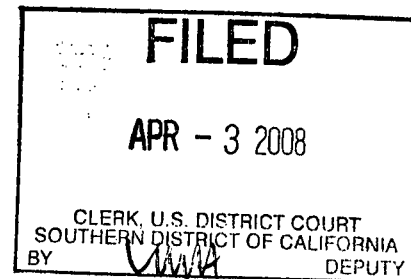


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Attorney for Material Witnesses: OMAR CUELLAR CASTILLO  
PEDRO GARCIA MATEO

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FORTINO ALVARADO ORTEGA,  
ALEJANDRO ROSAS CAMPIZ,

Defendants.

Case No.: ~~04 CR 1974 L~~ *08mj 0616-CAB*  
DECLARATION OF WAYNE C. MAYER  
IN SUPPORT OF MOTION FOR  
VIDEOTAPED DEPOSITION OF  
MATERIAL WITNESS(ES):  
DATE: April 3, 2008  
TIME: 9:30 AM  
DEPT: Bencivengo

I, Wayne C. Mayer, declare:

1. I am the attorney appointed to represent the material witnesses OMAR CUELLAR CASTILLO and PEDRO GARCIA MATEO in the Prosecution of defendants FORTINO ALVARADO ORTEGA and ALEJANDRO ROSAS CAMPIZ;
2. On or about February 28, 2008 there were a number of undocumented aliens being smuggled into the United States, three were designated as material witnesses and detained, the others either escaped or were released the night of their arrest;
3. A complaint charging the defendants with smuggling illegal aliens was filed February 29, 2008;

- 1 4. At the preliminary hearing set for March 13, 2008 the matter was continued over material  
2 witnesses objection and re-set for March 27, 2008.
- 3 5. On March 27, 2008 Information was filed and defendants arraigned on the information in  
4 case number 08 CR 0917 BEN. Also on that date the attorney for defendant FORTINO  
5 ALVARADO ORTEGA was relieved and attorney William Barker was retained and  
6 substituted in as attorney of record. A STIPULATION OF FACT RELEASE OF  
7 MATERIAL WITNESSES had not been completed and the matter was set for status and  
8 hearing to file the Stipulation of Fact and Release of Material Witnesses in Magistrate  
9 Bencivengo's department April 1, 2008;
- 10 6. Defendant FORTINO ALVARADO ORTEGA refused to sign A Stipulation for Release  
11 of the Material Witnesses and therefore a stipulation was not filed with the court;
- 12 7. An oral motion for a hearing to conduct a video taped deposition was granted with  
13 hearing set for April 3, 2008 at 9:30 am;
- 14 8. I have made a diligent effort to locate sureties for the material witnesses in this matter,  
15 but have been unsuccessful to locate a surety for the material witnesses OMAR  
16 CUELLAR CASTILLO and PEDRO GARCIA MATEO;
- 17 9. I did locate a surety for the material witness NERI ALBERTO HERNANDEZ ACOSTA  
18 and a material witness bond was posted March 7, 2008 and he was released on bond;
- 19 10. I have had no contacts with anyone who could act as surety for the witnesses OMAR  
20 CUELLAR CASTILLO and PEDRO GARCIA MATEO. Additionally, I do not expect I  
21 will be able to locate a surety for material witnesses OMAR CUELLAR CASTILLO and  
22 PEDRO GARCIA MATEO;
- 23  
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- 1 11. I have interviewed the material witnesses OMAR CUELLAR CASTILLO and PEDRO  
2 GARCIA MATEO who indicated to me they had no one in the United States that could  
3 or would be willing to assist the material witnesses in posting a material witness bond;
- 4 12. During my interviews with the material witnesses OMAR CUELLAR CASTILLO and  
5 PEDRO GARCIA MATEO they each indicated they had come to the United States in  
6 search of employment in order to support their needy families that remained behind in  
7 Mexico and they need to work to support their families;
- 8 13. The facts to which the material witnesses OMAR CUELLAR CASTILLO and PEDRO  
9 GARCIA MATEO would testify are straight forward, they jumped in back of a vehicle  
10 driven by one of the defendants, they can not identify either of the defendants as  
11 participating in this criminal enterprise;
- 12 14. The material witnesses OMAR CUELLAR CASTILLO and PEDRO GARCIA MATEO  
13 can NOT identify the person who drove either of the vehicles;
- 14 15. Virtually all of the evidence as to the guilt of the defendants comes from the *agents* of the  
15 Bureau of Customs and Border Protection, U.S. Border Patrol, who apprehended  
16 defendants and the material witnesses;
- 17 16. *Agents* with the U.S. Border Patrol observed conduct consistent with alien smuggling  
18 activity and initiated a detention of defendants who were in separate vehicles, one  
19 transporting the aliens and one acting as a look out according to agents with the U.S.  
20 Border Patrol who make said allegations based upon the *agents* training and experience  
21 and observations at the time in question;
- 22 17. I have not been advised by either government or defense counsel of any reasons why the  
23 witnesses' testimony cannot be adequately secured by deposition;
- 24  
25

1 18. Law Enforcement officials arresting the defendants can independently identify the  
2 defendants as the driver of the smuggling vehicle and the driver of the look out vehicle;

3 19. It is Law Enforcement's contacts, including prior contacts with the defendants in this case  
4 that gives rise to probable cause;

5 20. This case has very little to do with the material witnesses and everything to do with a  
6 pattern and practice used by smugglers as testified to by *Agents* with the United States  
7 Border Patrol;

8 21. I have not been advised by either government or defense counsel of any reason why a  
9 detention is necessary to prevent a failure of justice;

10 22. The parties have not been able to negotiate a resolution of this matter or stipulate to a  
11 date for a video deposition in order to facilitate the release of the material witnesses and  
12 their return to their country of origin.  
13

14 I make this declaration under penalty of perjury and the laws of the United States of America  
15 and California.

16 Dated: April 2, 2008

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Wayne C. Mayer  
18 Attorney for Material Witnesses  
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